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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,472	03/08/2002	Kaoru Murase	50023-166	1199

7590 08/22/2006

McDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington, DC 20005-3096

EXAMINER

SON, LINH L D

ART UNIT	PAPER NUMBER
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2135

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/092,472	Applicant(s) MURASE ET AL.	
	Examiner Linh LD Son	Art Unit 2135	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered ^{in part} and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 21 and 24-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

1. Claims 37 & 38 will not be entered. The amended claims 37 & 38 raise new issues that need further consideration and search.

Response to Arguments

2. Applicant's arguments filed 07/27/2006 have been fully considered but they are not persuasive.

3. In the specification:

[0050] In the processing at the time of power-on, the detecting unit 116 reads out the digital content data stored in HDD 112 by the reading unit 111, and then calculates the abuse prevention information corresponding to the digital content data. After that, the abuse prevention information is transmitted to comparing unit 203 (FIG. 3B: S305 to S306). Meanwhile, the comparing unit 203 reads out the abuse prevention information that has been stored in the API storage unit 202 (FIG. 3B: S307).

[0051] Next, the comparing unit 203 compares the abuse prevention information read from the API storage unit 202 and the one calculated by the API calculating unit 201 (FIG. 3B: S308).

[0052] At this time, if the above two pieces of the abuse prevention information are the same one,

it means that the digital content data stored in HDD 112 was not altered for the time the recording and reproducing device was powered off. Therefore, the normal processing S302 to S304 are repeated after this (FIG. 3B: S309 Yes to FIG. 3A S301).

[0053] If the above two pieces of the abuse prevention information are different each other, it means that the digital content data stored in HDD 112 was altered without intervening the recording and reproducing device for the time the recording and reproducing device was powered off. Therefore, the comparing unit 203 notifies the revoking unit 117 of the alteration (FIG. 3B: S309 No to S310).

[0054] Specifically, the comparing unit 203 sends the notice to the revoking unit when the abuse is performed as follows. In other words, in FIG. 8B, in case where the digital content data 802 in HDD 801 is moved to HDD 803, the digital content data in HDD 801 should be deleted while the abuse prevention information in the API storage unit 202 of the detecting unit 116 should be updated. At this time, as described in the prior arts, where HDD is copied physically, the digital content data 805 is copied to HDD 801 again, thereby the conditions of HDD 801 can be recovered to the original (the state including the digital content data 802). However, it is a fraudulent use, and it should not be allowable. Therefore, the comparing unit detects the difference between the abuse prevention information stored in the API storage unit 202 and the one of HDD recovered to the original, if the abuse (the alteration of the digital content data) can be found, the abuse is notified to the revoking unit 117.

[0055] Therefore, the detecting unit 116 can detect the abuse of the storage unit 118 (HDD 112, DVD113, and etc., for example); that is to say, the alteration of the digital content data can be detected.

Applicant clearly recites that the detecting of an abuse of a control program controlling the recording and reproducing instance of content is a process of determining the privileges of executing an instance of the content, such as reproducing and recording.

Rabin discloses the Applicant clearly (Col 39 and 40 and Figure 4). Memory 200 is a non-volatile memory, which means that the information does not get erased when the power is off. The memory 200 contains tag table 210, Inst_sw1 111, Inst_sw2 112, supervising program 209, fingerprint table 126, untagged software 129, and more. The tag table 210 stores a computed hash value of an software instance (Hash_inst_Sw) (Col 40 lines 55-62). This value is used to determine a request software instance is valid.

4. As per remark on page 13 3rd paragraph, Applicant argues that Rabin does not address detection of an abuse of a control program. Examiner disagrees. Rabin discloses a supervising program 209, which is controlling software instances describes in (Col 26 lines 55-26).

5. As per remark on page 13 4th paragraph, Applicant argues that Rabin neither discloses nor teaches calculating the abuse prevention information at the time of power-off. Examiner respectfully disagrees again. Rabins calculates the abuse prevention information and stores it in the Non-volatile memory 200. This information is stored to detect the abuse at all time even after ten times of power off and on. The instance of

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software are installing, using, executing, running connecting with, reading, otherwise retrieving from a storage medium or modifying a storage medium. A hash of such instance is called tag, which is a true signature of the instance or even the software itself, wherein instance is modifying a storage medium (Col 30 lines 37-55). Before each usage of the software or periodically, the supervising program verifies that a valid tag exists (signature of software or instance) to ensure authenticity (Col 27 line 65 to Col 28 line 10). This verification process ensures the integrity of the software at all times and even prevents or detects unauthorized modification.

6. Therefore, The rejection basis dated 3/28/2006 is maintained.

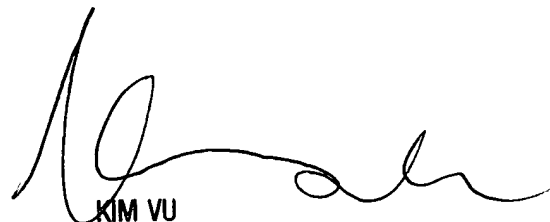
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linh LD Son whose telephone number is 571-272-3856. The examiner can normally be reached on 9-6 (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on 571-272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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